tain the petition. The relevant proviso to section 5(1) which requires consideration is paragraph (c), which enacts:—

"(c) the Court shall not grant any relief under this section except in cases where the petitioner resided in the Federation at the time of presenting the petition and the place where the parties to the marriage last resided together was in the Federation, or make any decrees of dissolution of marriage on the ground of adultery, cruelty or any crime except where the marriage was solemnized in the Federation or the adultery, cruelty or crime complained of was committed in the Federation;

I have given anxious consideration to the question whether that paragraph ought not to be construed as to mean that the Court shall not grant any relief of any kind under the section except in cases where:—

(1) the petitioner is residing in the Federation at the time of presenting the petition; and

(2) the place where the parties to the marriage last resided together was in the Federation;

and in addition to those two essential prerequisites, in cases where it is asked to grant a decree of dissolution of marriage on the ground of adultery or cruelty, there shall be the further requirement that either:—

(1) the marriage was solemnized in the Federation, *or*

(2) the act of adultery or cruelty alleged was committed in the Federation.

If that be the true construction to be placed upon the paragraph then clearly I have no jurisdiction to entertain the petition, since although the Petitioner satisfies two requirements this Court would be deprived of jurisdiction by reason of the fact that the place where the parties last resided together was not in the Federation but in England.

It seems to me, however, that such a construction entirely disregards the facts that the operative word used in the paragraph is not "and" but "or"; it is disjunctive and not conjunctive. If that be so, then the two parts of the paragraph must be read separately and in cases where a decree of dissolution on the ground of adultery or cruelty is sought then it is sufficient if either the marriage was solemnized in the Federation or the adultery was committed in the Federation. If that be the correct interpretation of the paragraph — and, in my view, it is — it follows that this Court had jurisdiction to entertain this petition.

The only remaining proviso for consideration is (d), which enacts that:—

"(d) the Court may refuse to entertain a petition in such a case if the petitioner is unable to show that by reason of his duty or employment, poverty or any other sufficient cause he or she is prevented from taking proceedings in the Court of the country in which he or she is domiciled and the Court shall so refuse if it is not satisfied that in the interests of justice it is desirable that the suit should be determined in the Federation."

I was entirely satisfied that the petitioner was prevented from taking proceedings in England on account of financial considerations and I was further satisfied that in the interests of justice it was desirable that this suit should be determined in the Federation.

4. There remained for consideration the question as to whether the petition was properly served upon both respondents, the respondent and the woman named. Service was ordered to be effected by sending copies of the petition and other relevant documents to the respondent at a specified address in England, by way of registered post.

It is clear that the 1st respondent received the petition, since a letter was produced in evidence before me addressed to the Petitioner's Solicitor emanating from a firm of Solicitors in Liverpool, in which they stated that they had been consulted by the 1st respondent with regard to the divorce papers, — and I quote from the letter itself — "served by you on him by letter dated the 14th August, 1957, and which were received by him on the 22nd instant". The Solicitors stated that they had advised the 1st respondent not to complete and return any of the forms, since it was their contention that this Court had no jurisdiction to grant any relief at all.

As regards the 2nd respondent, the woman named "Betty", a registered letter addressed to that name "Betty" at the same address as that of the 1st respondent was despatched to her at one and the same time. I think that I may properly assume that she received that letter and that service was properly effected upon her.

5. The petitioner has asked this Court to exercise its discretion in her favour. It is sufficient for me to say that I was fully satisfied that this was a proper case in which I could, and ought to, exercise that discretion in her favour and that her adulterous intercourse with the man with whom she is now living, and who she hopes to marry, was only commenced after it had become abundantly clear to her that her marriage with the 1st respondent was irretrievably ruined and broken.

It was for these reasons that I granted a decree nisi in this case.

Order accordingly.

PUBLIC PROSECUTOR v. NEOH BOON CHEONG

[C. A. (Good, Barakbah and Ong JJ.) July 14, 1959]

[Penang — F.M. Criminal Reference No. 2 of 1959]

Gaming — "Characters lottery" — Common Gaming Houses Ordinance, 1953 — Presumption under s.11 of assisting in a lottery then in progress — Whether prosecution must establish the particular contingency upon which the distribution depends — Object and intention of s.11 — Construction.

Evidence — Newspaper and its contents — Whether admissible — Presumption — Evidence Ordinance, 1950, s.81.

The defendant in this case was acquitted and discharged on the charge preferred against him under section 4(1)(c) of the Common Gaming Houses Ordi-

nance, of assisting in the carrying of a public lottery, to wit, the characters lottery on the ground that there was no evidence before the Court that July 19, 1958 was a Race Day in Singapore. At the conclusion of the case the learned Magistrate stated a case under section 317 of the Criminal Procedure Code (S.S. Cap. 21) on a point of law namely whether or not he was correct in law in holding that a newspaper and its contents were inadmissible in evidence to prove that July 19, 1958 was a Race Day in Singapore. At the same time the Deputy Public Prosecutor appealed against the decision of the Magistrate on the ground that the learned Magistrate should have held that a *prima facie* case had been made out where it was testified that a memorandum of stakes pertaining to the characters lottery was found in the possession of the accused.

Rigby J. held that (1) a copy of a newspaper can perfectly be produced by the prosecution and is admissible in evidence, always assuming that its production is relevant to the issue before the Court; (2) the presumption which arises under section 81 of the Evidence Ordinance is merely one as to the genuineness of the particular copy produced as a specimen of the newspaper in question. It affords no proof as to the truth or accuracy of its contents; (3) before the presumption under section 11 of the Common Gaming Houses Ordinance can arise the prosecution must not only prove through its expert witness the manner in which the lottery is operated and the memorandum of stakes or wagers relating thereto, but must also prove the final contingency, i.e., the particular sweepstake upon which the element of chance depends or is to be determined by. Proof of the particular contingency upon which distribution by chance or lot depends or is to be determined by is an essential element of the case for the prosecution; if they fail to prove that, they fail to prove the existence of a lottery; (4) the learned Magistrate was correct in holding that it was an essential part of the case for the prosecution to prove that the memorandum of stakes found in the possession of the defendant was a record of stakes or wagers "in or relating to a lottery" to be based upon the draw of the Big Sweep of the Singapore Turf Club Meeting held on July 19, 1958.

The Public Prosecutor applied to the Court of Appeal by way of reference under section 34 of the Courts Ordinance for the determination of the following question:

"Whether, before the presumption under section 11 of the Common Gaming Houses Ordinance 1953 can arise, it is essential for the prosecution to establish the particular contingency upon which the distribution depends or by which it is determined."

Held: possession by any person of a memorandum of stakes or wagers in or relating to a lottery raises against him a presumption of assisting in a public lottery, which may be rebutted by any explanation casting doubt upon the fact of the memorandum being related to any lottery at all, or to any lottery then in progress. The presumption raised by section 11 dispenses with proof of the particular contingency upon which the distribution depends or by which it is determined.

Case referred to:—

(1) *Curtis* v. *Stovin* (1889), 22 Q.B.D. 512, 519.

CRIMINAL REFERENCE to Court of Appeal.

H. S. Ong (Federal Counsel) for the appellant.

Eusoffe Abdoolcader for the respondent as *amicus curiae*.

Good J.: I have had the advantage of reading the judgment of my brother Ong with which I am in complete agreement. I would only add two short points.

The "characters" lottery is a parasite lottery. It has no life of its own, and only exists by virtue of another lottery to which it attaches itself. If the evidence of the system is accepted, it follows that a person participating in a characters lottery knows that he is hazarding his money on the outcome of some extraneous method of distribution depending on chance. I do not think it matters whether he knows what that extraneous contingency is provided that he knows the kind of operation in which he is participating, and this necessarily follows if the expert evidence is accepted.

I will make my second point by an illustration. On a Friday morning the Police discover persons in the act of operating what the expert testifies is a characters lottery. There is a Social Welfare lottery being drawn that afternoon, and on the following day there is a Race Meeting in Singapore. It seems to me that it would be quite impossible for the prosecution to prove to which of these events the characters lottery related. The object and effect of the presumption would be defeated if they had to do so. The characters lottery might be run in conjunction with either of the events or, for that matter, in conjunction with a Race Meeting to be held in the following week. In order to prove the connection the prosecution would have to prove what was the winning number in the characters lottery and show that it was the same as the last two, three, or four digits of the winning number in the sweepstake. If that is what the legislature intended, I am unable to see for what purpose section 11 was included in the Ordinance.

For these reasons, and for the reasons given by my brother Ong, I would hold with him that the answer to the question under reference should be in the negative.

Barakbah J.: In this Reference I have had the advantage of reading the judgments of Good, J. and Ong, J. I am in complete agreement with them and have nothing to add thereto.

Ong J.: This is a reference by the Public Prosecutor under section 34 of the Courts Ordinance and the question for determination is:

"Whether, before the presumption under section 11 of the Common Gaming Houses Ordinance 1953 can arise, it is essential for the prosecution to establish the particular contingency upon which the distribution depends or by which it is determined."

On July 19, 1958 a Police Officer gazetted under the provisions of the Common Gaming Houses Ordinance, 1953, raided premises No. 260-A, Carnarvon Street, Penang. In the kitchen he found one Neoh Boon Cheong seated on a chair in front of a table writing. On the table were two booklets, 18 slips of paper and 8 further pieces of paper with writing on them and a cigarette tin containing $4.60 in coins, all of which were taken possession of by the Police Officer.

Neoh Boon Cheong was arrested and duly charged under section 4(1)(c) of the Common Gaming Houses Ordinance with assisting in the carrying on of a public lottery, to wit, the 100, 1,000 and 10,000 character lottery.

At the trial a Police Inspector gave evidence as an expert, describing in detail the operation of the characters lottery, the odds paid, the duties of collectors and promoters and he stated reasons — which he explained in detail — for his opinion that certain of the papers produced in evidence were memoranda of stakes pertaining to 100, 1,000 and 10,000 characters lotteries. He further stated that the numbers "19.7.58" appearing at the bottom left-hand corner of the slips of paper constituting the memoranda of stakes referred to the last day of the Race Meeting of the Singapore Turf Club.

The Prosecution sought to produce through this witness a copy of the "Straits Echo" printed and published in Penang, reporting the results of the races held in Singapore on July 19, 1958, but as the witness admitted in cross-examination that he was not personally present at those races, defending Counsel objected to the production of the newspaper, and his objection was upheld by the learned Magistrate. No other evidence aliunde was tendered by the prosecution to prove the fact of there having been a race meeting held by the Singapore Turf Club on the relevant date, and upon the close of the prosecution case the learned Magistrate held that there was no case for the defendant to answer, and he was accordingly acquitted and discharged.

In his judgment the learned Magistrate says:

"Independent evidence should be given to prove that there was actually a race in Singapore that day. This point is of great importance and necessity to the prosecution to prove its case, as the determination of these character lotteries depends on there being a race and the big sweep taking place that day, without which, according to the expert, the paper slips which are memorandum of stakes, are valueless."

The Deputy Public Prosecutor appealed against this decision, and on January 26, 1959, Rigby J. dismissed the appeal, on the ground that before the presumption under section 11 can arise the prosecution must not only prove through its expert witness the manner in which the game was played and the memorandum of stakes or wagers retaining thereto, but also prove the final contingency i.e. the particular sweepstakes upon which the element of chance depended or was to be determined by. As His Lordship puts it:

"Proof of the particular contingency upon which distribution by chance or lot depends or is to be determined by is, in my view, an essential element of the case for the prosecution; if you fail to prove that you fail to prove the existence of a lottery."

In arriving at such conclusion the learned Judge says:

"In my view — and as Mr. Eusoffe Abdoolcader pointed out — the essential fallacy of the learned Deputy's argument is that it fails to give effect to the vitally important words in section 11, namely a memorandum of stakes or wagers 'in or relating to a lottery' and thereby avoids a consideration as to what constitutes a lottery."

The relevant portion of section 11 reads:

"A person . . . found in possession of . . . any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery shall be presumed until the contrary is proved to be assisting in a public lottery then in progress."

With the utmost respect to the judgments under appeal, I am unable to concur.

The object and intention of the legislature in enacting section 11 is clearly to minimise or lighten the burden of proof which ordinarily rests upon the prosecution of proving every ingredient of the offence with which the defendant is charged. Had this section been omitted from the Ordinance, then, in a prosecution under section 4(1)(c), it would have been incumbent on the prosecution to prove (i) the lottery, and (ii) such acts or conduct on the part of the defendant as would amount to assisting in carrying on such lottery. Possession of a memorandum of stakes in or relating to a lottery would be *prima facie* evidence of assistance, and be sufficient proof of the second of the two ingredients of the offence. If, in spite of the enactment of section 11, it is nevertheless necessary to prove also the lottery, that is to say, both ingredients of the offence, then I fail to see for what useful purpose that section should be introduced. Therefore to my mind, the section ought to be construed in the plain ordinary sense of the words therein appearing, namely, that if the prosecution proves —

(i) possession on the part of the defendant
(ii) of a memorandum of stakes in or relating to a lottery,

then, in such event, the presumption arises against him of "assisting in a lottery then in progress." To hold otherwise would lead to results which Fry L.J. described in *Curtis* v. *Stovin* [1] in these words:

"The only alternative construction offered to us would lead to this result — that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction we should be contruing the Act in order to defeat its object rather than with a view to carry its object into effect."

In the next place, what is the presumption raised by section 11 against a person found in possession of any memorandum of stakes in or relating to a lottery? In the words of the section he "shall be presumed, unfil the contrary is proved to be assisting in a public lottery then in progress." The immediate effect of such presumption, therefore, is to relieve the prosecution of the necessity of proving, firstly, the assisting, secondly, the public lottery, and thirdly, that the public lottery was then in progress. It is to be particularly noted that the presumption refers not to a lottery simpliciter, but to a "public lottery then in progress". To hold that, notwithstanding proof of possession of a memorandum of stakes in or pertaining a lottery, proof must also be given of the contingency or sweepstake upon which the distribution depends, leads logically to only one possible conclusion, that only proof of the "assisting" is dispensed with by reason of the presumption. For my part I am unable to see any justification for such an attenuated interpretation of the section. At the risk of repeating myself, so far as proof of

"assisting" is concerned, the fact of possession of such incriminating evidence as the memorandum of stakes is sufficient *prima facie* evidence of assisting and require no aid from any presumption.

Lastly, I am of opinion that the words "in or relating to a lottery" are used in the sense of an adjectival phrase, for want of a simple adjective derived from the word "lottery." In my view the expression "memorandum riddle or record of stakes or wagers in or relating to a lottery" must be read in this light, that is to say, if the memorandum is one of this nature, then the presumption arises. There is no analogy between the adjectival phrase here and the word "stolen" as in stolen property. Upon a charge of dishonestly receiving stolen property, proof of theft of the property is necessary because ordinarily the property stolen contains in itself no evidence that it had been obtained by theft. The memorandum of stakes, however, bears on the face of the document itself sufficient data upon which may properly be formed the conclusion that it is a memorandum of stakes in or relating to a lottery.

In my opininon, therefore, possession by any person of a memorandum of stakes or wagers in or relating to a lottery raises against him a presumption of assisting in a public lottery, which may be rebutted by any explanation casting doubt upon the fact of the memorandum being related to any lottery at all, or to any lottery then in progress. Accordingly the presumption raised by section 11 dispenses with proof of the particular contingency upon which the distribution depends or by which it is determined.

I should add that I have not thought it necessary to refer to the many cases which have been cited to us by the learned Deputy and by Mr. Eusoffe Abdoolcader (who appeared as *amicus curiae* both before Rigby J. and in this reference) for the reason that the point which has been raised appeared never to have been considered before. None of the authorities cited would be really pertinent, and we therefore have to approach the question as *res integra*. We are, however, most grateful to learned Counsel for their painstaking research and industry and for their strong arguments on both sides of the question which have been of the greatest assistance to us.

Question answered.

Solicitors: *Presgrave & Matthews.*

ONG CHIN SENG & ANOR. v. REGINA *

[C. C. A. (Rose C.J., Chua & Wee Chong Jin JJ.)
October 27, 1959]

[Singapore — Criminal Appeal No. 14 of 1959]

Criminal law — Unlawful assembly — Penal Code, ss.141, 149 and 302 — Construction — Whether "or other offence" should be read ejusdem generis with "mischief or criminal trespass" — s.141(3) — "Common object" — Meaning of.

The appellants (the 1st and 4th accused respectively, the 2nd and 3rd being acquitted) were charged with an offence under section 149 of the Penal Code in that they, while being members of an unlawful assembly whose common object was to cause hurt by dangerous weapons, caused the death of one Ong Hock Soon.

Counsel for the appellant contended that the common object alleged i.e. to cause death by dangerous weapons does not expressly come within the ambit of section 141 although it could possibly come under section 141 3rd head. However, the phrase "or other offence" appearing in the third limb of the said section should be read *ejusdem generis* with "mischief or criminal trespass" and causing hurt with dangerous weapons is not within the 3rd head of section 141. Secondly, there was inadequate particularization of the common object in the charge to the extent which gravely prejudiced the defence.

Held: (1) the 3rd head of section 141 is intended to include all offences both against person and property, and not only mischief, trespass and *ejusdem generis*;

(2) failure to specify the common object in a charge under the appropriate section would not be fatal to the trial if it can be shown that there was ample evidence on the record to prove what the common object of the assembly was.

Cases referred to:—

(1) *Ramchandra Narayan Shastri* v. *Emperor* A.I.R. 1931 Bombay 520.
(2) *Dhian Singh & Ors.* v. *Emperor* A.I.R. 1915 Lahore 418.
(3) *R.* v. *Sadla & Ors.*, A.I.R. 1950 Allahabad 418.

COURT OF CRIMINAL APPEAL.

David Marshall for the 1st appellant.

F. B. de Souza for the 2nd appellant.

A. V. Winslow (Solicitor-General) [*A. W. Ghows* (Crown Counsel) with him] for the respondent.

Rose C.J.: Four accused persons were tried at the Assizes on the following charge:—

That you on or about the 9th day of January 1959 at or about 9.30 p.m. outside Seng Wah Open Air Cinema at 9½ m.s. Tamoenis Road, Singapore, were a member of an unlawful assembly whose common object was to cause hurt by dangerous weapons and that while you were a member of that assembly one or more members thereof in the prosecution of the common object of the assembly committed murder by voluntarily causing the death of one Ong Hock Soon an offence which the members of the assembly knew to be likely to be committed in the prosecution of the common object of the assembly and you have by virtue of section 149 of the Penal Code committed an offence punishable under section 302 of the Penal Code (Chapter 119).

The present appellants were the first and fourth accused respectively, the second and third accused being acquitted. The verdicts in each case were by a majority of 6 to 1.

The first point raised on behalf of both appellants is that the charge did not disclose an offence known to the law in that the common object referred to therein is not a common object rendering an assembly unlawful within the meaning of sections 141 and 149 of the Penal Code.

Section 141 provides as follows:—

"An assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is —

Firstly — to overawe by criminal force, or show of criminal force, the Legislative or Executive Government of the Colony, or any public servant in the exercise of the lawful power of such public servant; or

Secondly — to resist the execution of any law, or of any legal process; or

* Leave to appeal to the Privy Council was not granted in this case. *Ed. M.L.J.*